## UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS CORPUS CHRISTI DIVISION

RAQUEL CONTRERAS	§	
Plaintiff,	§	
	§	
v.	§	Civ. No. CC-07-296
	§	
IVAX PHARMACEUTICALS, INC.,	§	
PLIVA, INC., BARR	§	
PHARMACEUTICALS, INC., LA	§	
HACIENDA PHARMACY, TEVA	§	
PHARMACEUTICALS USA, INC.,	§	
Defendants.	§	

## **ORDER REMANDING CASE**

Plaintiff has moved to remand her suit to the 229th District Court of Duval County, Texas. Based on the allegations before it, and after hearing arguments by the parties, the Court holds that defendants have not met their burden of demonstrating that there is no possibility of recovery by plaintiff against an in-state defendant. *See Smallwood v. Illinois Cent. R.R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004). The presence of the in-state defendant, La Hacienda Pharmacy, in this case precludes the assertion of jurisdiction under 28 U.S.C. § 1332 and leaves the Court without subject matter jurisdiction.

The Court has reviewed at length the well reasoned opinion of *Morgan v. Wal-Mart Stores, Inc.*, 30 S.W.3d 455 (Tex. App.—Austin 2000, pet. denied), as well as the authorities of many jurisdictions sister to the state of Texas, which hold that there is no general duty of a pharmacist to warn the patient of the risks of taking a drug prescribed

by the patient's physician. In this case, plaintiff has alleged circumstances that may take this case beyond the simple application of the general rule. These allegations include an alleged decision on the part of the pharmacist to provide a generic drug whose warning allegedly did not conform to the warnings of the branded drug ordered by the physician.

Accordingly, the Court GRANTS plaintiff's Motion to Remand. The Court ORDERS this case remanded to the 229th District Court of Duval County, Texas pursuant to 28 U.S.C. § 1447(c) and (d).

ORDERED this 7th day of December, 2007.

Hayden Head
CHIEF JUDGE